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Clerk of the Superior Court

JAN 4 2007

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN DIEGO**

Coordination Proceeding Special Title
 (Rule 1550(b))

NATURAL GAS ANTI-TRUST CASES I, II,
 III, IV

This Document Relates to:

THE PRICE INDEXING CASES

JCCP Nos. 4221, 4224, 4226 & 4228

**[PROPOSED] ORDER REGARDING
 CERTAIN OUTSTANDING
 DISCOVERY ISSUES**

The Honorable Ronald S. Prager
 Coordination Trial Judge
 Dept. 71

Date: August 8, 2006

1 **[PROPOSED] ORDER**

2 The Court has considered the letter briefs from both Plaintiffs and Defendants, and the
3 jointly submitted grid summarizing the positions of each side with regard to certain outstanding
4 discovery issues, titled "Plaintiff-Defendant Discovery Disputes as of August 2, 2006," and it has
5 heard the arguments of counsel from both sides. Based upon the agreements reached by the
6 parties during the August 8, 2006 hearing before this Court, and finding good cause therefore;

7 **IT IS HEREBY ORDERED THAT:**

8 **1. GEOGRAPHIC SCOPE**

9 **a. Hubs and Markets**

10 For purposes of discovery, Defendants shall provide discovery related to the following
11 hubs and markets:

12 **Hubs:** Malin, Kern River (PG&E), Kern River (SoCal), PG&E Citygate, Daggert,
13 Ehrenberg, Needles, Topock, Wheeler Ridge, Henry.

14 **Western Markets:** Nova/AECO, CIG, Cheyenne, El Paso Bondad, El Paso non-Bondad
15 (Blanco), Kern River, Kingsgate, Northwest Domestic, Northwest South of Green River,
16 Northwest Sumas, Opal, Questar, Stanfield, El Paso Permian, NGPL Permian, Northern
17 Natural Mid 1-6, Transwestern and Waha.

18 Plaintiffs are not precluded from asking discovery about other specific natural gas
19 transactions outside this geographic scope. However, if Defendants do not believe that such
20 discovery is allowable under the Code of Civil Procedure, the parties are to meet and confer after
21 Defendants have provided written responses to the discovery requests. Absent an informal
22 resolution, the parties may bring the issue to the Court.

23 **b. Production of Transaction Data**

24 To the extent that they have not already done so, Defendants will produce transaction data
25 for each Hub and Market identified in paragraphs 1(a) and (b) (and for Nova/AECO to the extent
26 agreed or ordered) regarding natural gas transactions. For Henry Hub, the information is to be
27 limited to calendar years 2000 and 2001. For this purpose, "transaction data" at a minimum shall
28 include for particular transactions: (a) transaction date and time, (b) identification of

1 counter-party, (c) transaction type (physical or financial), (d) "market" or delivery/acceptance
2 location, (e) contracted performance or "flow" date, and (f) contracted per unit price. Defendants
3 need not produce at this time subtending documents (*i.e.*, documents that merely reflect trades or
4 transaction information that will have already been provided to Plaintiffs and are therefore
5 duplicative of such information).

6 Plaintiffs have the right to seek such subtending documents at a later time, if needed upon
7 a showing of good cause. The Defendants shall also produce non-audio trade reports they made
8 to price index publishers for transactions at the Hubs and Markets identified in paragraphs 1(a)
9 and (b) (and for Nova/AECO to the extent agreed or ordered). *See* Hearing Transcript 50:28-
10 57:16.

11 **c. Production of Reports to Price Index Publishers**

12 To the extent they have not already done so, Defendants will produce non-audio trade
13 reports they made to price index publishers for transactions at the Hubs and Markets referred to
14 in Paragraph 1(a) for the calendar years 2000 and 2001.

15 **2. WASH TRADES:**

16 For purposes of discovery, Plaintiffs may formulate a definition or definitions for the term
17 "wash trade." Defendants do not admit that transactions that possess the characteristics of
18 Plaintiffs' "wash trade" definition constitute unlawful transactions, or could otherwise lead to
19 legal liability.

20 Plaintiffs may either propound new discovery requests that employ their definition of
21 "wash trade," or they may instruct Defendants to apply Plaintiffs' definition of "wash trade" to
22 discovery Plaintiffs have already propounded. Defendants shall respond to such new or pending
23 discovery requests in accordance with the Code of Civil Procedure and the Evidence Code. The
24 parties are directed to meet and confer in an attempt to reach an informal resolution regarding
25 any disputes arising from such discovery requests. Absent an informal resolution, the parties
26 may bring the issue to the Court. *See* Hearing Transcript at 23:27-24:4, 40:28-41:26.

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1 **3. PLAINTIFFS' SUBTENDING DOCUMENTS**

2 This issue shall be deferred to a later date.

3 **4. PRIVILEGE LOGS**

4 In regard to parties who have not yet provided privilege logs, the parties shall continue to
5 meet and confer as to what categories of documents will be reflected in privilege logs and what
6 information regarding such documents should be provided. The Defendants shall then make an
7 individual assessment as to what they can provide to Plaintiffs as part of a privilege log or notify
8 Plaintiffs that they have not withheld any documents on the basis of privilege. To the extent
9 disagreements remain thereafter that cannot be resolved through informal meet and confer, the
10 parties may bring them to the Court. *See* Hearing Transcript 63:15-75:7.

11 **5. TRADER TAPES**

12 In addition to requesting that Defendants produce the tapes they produced to
13 governmental agencies, Plaintiffs have requested other trader tapes and Defendants have raised
14 an issue of burden in producing these tapes. Plaintiffs may jointly provide to each Defendant
15 (other than WD Energy Services, Inc. and EnCana Corporation, from which Plaintiffs have
16 already received full production of trader recordings) a description of up to 100 hours of recorded
17 tape recordings which Plaintiffs desire to review in discovery. The description shall specify, to
18 the extent reasonably possible, the trader(s) whose recording they wish reviewed, and the dates
19 and times of such traders' recordings. Defendants may then review those tapes in the manner in
20 which they would review any other types of materials prior to production, and withhold from
21 production those which they believe in good faith are not properly producible. They are to
22 produce the remainder of the reviewed tapes and provide a privilege log of any material withheld.
23 *See* Hearing Transcript 89:23-90:17; 91:6-12.

24 Thereafter, the parties shall meet and confer regarding further tape production, if any. To
25 the extent the parties are unable to reach an agreement among themselves, the parties may seek
26 Court intervention. *See* Hearing Transcript 91:13-15.

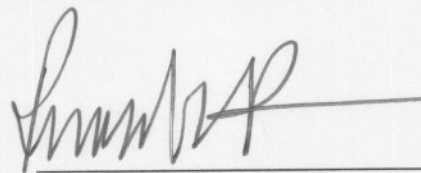
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6. RELEVANT DISCOVERY TIME PERIOD

Except as otherwise agreed or ordered by the Court, the relevant period for discovery of matters addressed herein shall be January 1, 2000 through December 31, 2001.

IT IS SO ORDERED.

DATED: JAN 04 2007



Hon. Ronald S. Prager
Coordination Trial Judge